04/12/07

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No.509 of 2007

APPELLANT (DEFENDANT NO. 3)	Krishna S/o Ramnarayan, aged about 62 years, r/o Behind Tara Engineering, Chakradhar Nagar, Raigarh, Tahsil Raigarh (C.G.)
	Versus
RESPONDENTS (PLAINTIFF)	1. Champa Bai, d/o Dhan Singh, aged about 60 years
Defendant No. 1	2. Gopal Singh S/o Ram Singh, aged about 55 years
Defendant No. 2	3. Ganeshi Bai, widow of Daulatram, aged about 60 years All r/o Behind Tara Engineering, Chakradhar Nagar, Raigarh, Tahsil Raigarh (C.G.)

Memo of Second Appeal under Section 100 of the Code of Civil Procedure,1908

Present :

Shri A.V. Shridhar, counsel for the appellant.

ORAL ORDER

(Passed on 3rd December, 2007)

Heard on I.A. No.01/2007 which is an application for condonation of delay in filing the appeal.

2. The judgment and decree of the trial Court was passed on 31-01-2004 in Civil Suit No. 138-A/2002. Civil Appeal No.7-A/2004 was dismissed on 14.7.2005. Second Appeal was preferred on 27-11-2007 along with an application under Section 5 of the Limitation Act for condonation of delay of 767 days in filing the appeal.

3. It is not in dispute that the appellant was represented by counsel in both the Courts below which recorded a concurrent finding against the appellant/defendant No.3. This appeal is filed after a delay of 767 days beyond the prescribed period of limitation. In the application, it

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has been mentioned that at the behest of the counsel, the appellant handed over the certified copy of the judgment and decree of the Courts below to one Ranjeet Singh Thakur for filing an appeal. Nowhere has it been mentioned as to when this was done.

4. Learned counsel for the appellant submitted that Ranjeet Singh Thakur is not an Advocate. It is stated that said Ranjeet Singh Thakur had given the papers to Shri B.R. Ghosh, Advocate. The appellant has further mentioned in the application that despite his visiting Bilaspur in the year 2005 and 2006, he did not personally contact Shri B.R. Ghosh, Advocate. At a very late stage when during execution of the judgment and decree started and the application for staying the execution was dismissed by the executing Court, the appellant contacted Shri B.R. Ghosh, Advocate on 20-10-2007 who told him that he had returned all the documents to said Ranjeet Singh Thakur.

5. The appellant has thus not shown any sufficient explanation for not preferring the appeal within the prescribed period of limitation. The appeal is hopelessly barred by limitation. The affidavit of Ranjeet Singh Thakur or Shri B.R. Ghosh, Advocate has also not been filed. It is beyond comprehension that although the appellant was represented by counsel in both the Courts below he would hand over the papers to Ranjeet Singh Thakur, a stranger for filing an appeal before the High Court.

6. In this view of the matter, there being no sufficient cause for condonation of delay, the application for condonation of delay in filing this appeal is dismissed. As a consequence thereof, the appeal also stands dismissed as barred by limitation.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Kvr